IN THE SUPREME COURT OF THE STATE OF DELAWARE

HASINI PERKINS,	§	
	§	No. 360, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0811004552
Appellee.	§	

Submitted: November 18, 2009
Decided: February 22, 2010

Before **BERGER, JACOBS** and **RIDGELY,** Justices.

O R D E R

This 22nd day of February 2010, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) On April 8, 2009, the appellant, Hasini Perkins, pled guilty in the Superior Court to charges of Attempted Robbery in the First Degree, Assault in the Second Degree, Carjacking in the Second Degree, and Felony Criminal Mischief. On June 12, 2009, Perkins was declared a habitual offender, pursuant to title 11, section 4214(a) of the Delaware Code, and was

sentenced to a total of sixteen years at Level V incarceration followed by supervision at Levels IV and III.[1] This is Perkins' direct appeal.

(2) On appeal, Perkins' appellate defense counsel ("Counsel") has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) ("Rule 26(c)").[2] The standard and scope of review of a motion to withdraw and an accompanying brief under Rule 26(c) is two-fold. First, the Court must be satisfied that Counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal.[3] Second, the Court must conduct its own review of the record and determine whether the appeal is so devoid of at least arguably appealable issues that it can be decided without an adversary presentation.[4]

(3) Counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. Counsel states that he provided Perkins with a copy of the motion to withdraw and the accompanying brief and appendix. Counsel also advised Perkins that he had a right to supplement Counsel's presentation. Perkins responded with a

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[1] *See* Del. Code Ann. tit. 11, § 4214(a) (Repl. 2007) (providing that any person three times convicted of specified felonies is, upon a fourth conviction or subsequent conviction, subject to a sentence of up to life imprisonment).
[2] The record reflects that Perkins was represented by a different assistant public defender at trial.
[3] *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).
[4] *Id.*

written submission that raises two issues. The State has responded to Perkins' submission as well as the position taken by Counsel and has moved to affirm the Superior Court judgment.

(4) Perkins claims that the Superior Court erred when imposing an enhanced sentence under section 4214(a) on two of the four charges to which he pleaded guilty. According to Perkins, under section 4214(a), he could receive an enhanced sentence on only one charge.

(5) Perkins' claim is without merit. A defendant found eligible for habitual offender sentencing under section 4214(a) is subject to the imposition of an enhanced penalty of up to life imprisonment for each violent felony that forms the basis of the State's petition.[5]

(6) In his second issue on appeal, Perkins complains that his trial counsel, an assistant public defender, represented the victim's husband in a 2004 bankruptcy case. Perkins appears to suggest, as he did in the Superior Court without success, that his trial counsel had a conflict of interest.

[5] *Turner v. State*, 957 A.2d 565, 574-75 (Del. 2008). Furthermore, the record reflects that Perkins admitted that he was eligible for section 4214(a) sentencing as a condition of the plea agreement. In return, the State agreed to nolle prosse the remaining charges in the indictment and to recommend a total of sixteen years at Level V incarceration, eight of those years imposed pursuant to pursuant to section 4214(a) for Assault in the Second Degree and five years imposed pursuant to section 4214(a) for Carjacking in the Second Degree. Perkins confirmed the agreement and his understanding of it during the plea colloquy and at sentencing, and the Superior Court properly imposed the sentence recommended by the State.

(7) Having reviewed the record, the Court agrees with the Superior Court that, without specific allegations of prejudice, Perkins' conflict of interest claim lacks merit.[6] To the extent Perkins' complaint can be construed as an allegation that his trial counsel was ineffective due to a conflict, this Court generally will not consider claims of ineffective assistance of counsel raised for the first time on direct appeal.[7]

(8) The Court has reviewed the record carefully and has concluded that Perkins' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that Perkins could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

[6] *Hitchens v. State*, 2007 WL 2229020 (Del. Supr.).
[7] *Williams v. State*, 2003 WL 21755844 (Del. Supr.) (citing *Lewis v. State*, 757 A.2d 709, 712 (Del. 2000)).